

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

06-637

| | | |
|--|------------------------|---|
| United States District Court | | District OF DELAWARE |
| Name MICHAEL D. SHUDA | Prisoner No. 574596 | Case No. 0501002586 |
| Place of Confinement HOWARD R. YOUNG CORRECTIONAL INSTITUTION 1301 E. 12 TH STREET, WILMINGTON, DE. 19809 | | |
| Name of Petitioner (include name under which convicted) MICHAEL D. SHUDA | | Name of Respondent (authorized person having custody of petitioner) v. WARDEN RAPHAEL WILLIAMS |
| The Attorney General of the State of: DELAWARE | | |

PETITION

- Name and location of court which entered the judgment of conviction under attack THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY
- Date of judgment of conviction AUGUST 07, 2006
- Length of sentence 6 MOS SUSPENDED, IN LIEU OF 1 YR LEVEL (1) PROBATION
- Nature of offense involved (all counts) ONE (1) COUNT OF THE OFFER AND SALE OF UNREGISTERED SECURITIES.

(SEE SENTENCING WORKSHEET)

5. What was your plea? (Check one)

- (a) Not guilty ☐
 (b) Guilty ☒
 (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury ☐
 (b) Judge only ☐

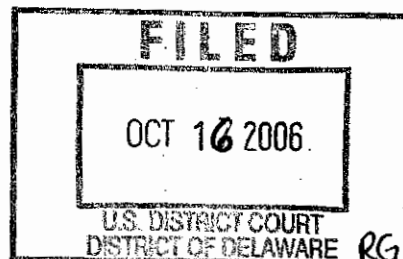
7. Did you testify at the trial?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☐ No ☒

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9. If you did appeal, answer the following:

(a) Name of court _____

(b) Result _____

(c) Date of result and citation, if known _____

(d) Grounds raised _____

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court _____

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court _____

(2) Result _____

(3) Date of result and citation, if known _____

(4) Grounds raised _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court SUPERIOR COURT IN AND FOR NEW CASTLE CTY. IN THE
STATE OF DELAWARE.

(2) Nature of proceeding _____

WRIT OF HABEAS CORPUS(3) Grounds raised VIOLATION OF THE PETITIONER'SINTERSTATE AGREEMENT ON DETAINERS

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"THE PETITIONER IS FILING THIS PETITION NOW AS
TIME IS OF THE ESSENCE AS IT PERTAINS TO THE
PETITIONER'S GOOD TIME AND OTHER PENDING ISSUES."

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result NONE AVAILABLE

(6) Date of result NONE AVAILABLE

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

I BELIEVE THE GROUNDS RAISED (I.A.D) FALL
UNDER FEDERAL JURISDICTION.

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CALTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

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For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you *should* raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

(SEE STATEMENT OF FACTS)

A. Ground one: _____

DENIAL OF PETITIONER'S 1ST AMENDMENT RIGHTS

Supporting FACTS (state briefly without citing cases or law) BY BEING IN VIOLATION OF THE PETITIONER'S I. A. D., THE STATE OF DELAWARE IS DENYING THE PETITIONER'S RIGHT TO COMMUNICATE AND HAVE VISITS FROM HIS FAMILY.

B. Ground two: DENIAL OF LIFE, LIBERTY, THE PURSUIT OF HAPPINESS, DUE PROCESS, AND EQUAL PROTECTION RIGHTS

Supporting FACTS (state briefly without citing cases or law): BY BEING IN VIOLATION OF THE PETITIONER'S I. A. D. THE STATE OF DELAWARE IS DENYING THE PETITIONER'S RIGHT TO:

1) COMMUNICATE WITH AND HAVE FAMILY VISITS.

2) "GOOD TIME," AKA "GAIN TIME," THEREBY AFFECTING THE PETITIONER'S EARLY RELEASE DATE.

(SEE GROUND TWO CONTINUED)

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C. Ground three: DENIAL OF THE PETITIONER'S 8TH
AMENDMENT RIGHTS

Supporting FACTS (state briefly without citing cases or law): BY VIOLATING THE
PETITIONER'S I.A.D. THE STATE OF DELAWARE HAS
SUBMITTED THE PETITIONER TO:

1) C-O-HABITATING WITH TWO ADDITIONAL INMATES IN A
CELL DESIGNED FOR TWO.

2) SLEEPING ON THE CELL FLOOR.

(SEE GROUND THREE CONTINUED)

D. Ground four

VIOLATION OF PETITIONER'S I. A. D.

Supporting FACTS (state briefly without citing cases or law): BY NOT RETURNING THE
PETITIONER TO HIS HOME STATE WITHIN THE 180
ALLOTTED DAYS UNDER THE TERMS AND CONDITIONS OF
THE I.A.D., THE STATE OF DELAWARE IS IN
VIOLATION.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them:

THE INTERSTATE AGREEMENT FALLS UNDER
FEDERAL JURISDICTION, AND WERE NOT PRESENTED IN
STATE COURT. CONSEQUENTLY, 12A, B, C, D, ARE FEDERAL
CONSTITUTIONAL ISSUES.

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
 Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing

(b) At arraignment and plea

ANTHONY FIGLIOLA, JR.
1813 MARSH RD., SUITE A, WILMINGTON, DE. 19810

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- (c) At trial ANTHONY FIGLIOLA, JR
1813 MARSH RD., SUITE A WILMINGTON, DE. 19810
- (d) At sentencing ANTHONY FIGLIOLA JR
1813 MARSH RD., SUITE A, WILMINGTON, DE. 19810
- (e) On appeal _____
- (f) In any post-conviction proceeding _____
- (g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

(SEE RELIEF SOUGHT)

 Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

10/11/06
 (date)

Michael A. Shuck

Signature of Petitioner

Frank Boultingbry
228 Marshall Ave.
Gibbstown, NJ 08027

U.S.N. X-RAY

[Faint, illegible handwritten or stamped text]

22.8. District Court
844 King St.
21.8. Court House
Wilmington, DE, 19801

ATTN: Clerk

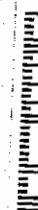
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AMOUNT
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SENTENCING WORKSHEET

| | | | |
|--------------------------|---|--|--|
| DEPT. | DEFENDANT NAME: <u>Michael Spuda</u> | | BI: _____ |
| | AKA: _____ | | Date: <u>8/7/06</u> |
| CHARGE | ID NUMBER: <u>0501007586</u> | | DOB: <u>10/14/06</u> |
| | CHARGE: <u>Sale using Securities</u> | | Judge: <u>TRS</u> |
| FINANCIAL | LIO: _____ | | <input type="checkbox"/> No Injury or Death Pursuant to 21 Del. C. § 4205A: Defendants convicted under §4177B(e)(1)a-d; the terms of imprisonment defined in this title may be served at Level 4 as defined in 11 Del. C. §4204(c)(4). |
| | Cr.A. <u>0529</u> | | BAC: _____ <input type="checkbox"/> 4214(a) <input type="checkbox"/> 4214(b) |
| IMPRISONMENT / PROBATION | <input checked="" type="checkbox"/> Pay Costs <input type="checkbox"/> Costs Suspended | | <input type="checkbox"/> PD Fee/Conflict <input type="checkbox"/> Surcharges <input type="checkbox"/> Diversion Fee <input type="checkbox"/> SARTEP |
| | <input type="checkbox"/> 15% <input type="checkbox"/> 18% <input type="checkbox"/> Pay Fine: \$ _____ <input type="checkbox"/> Amount Suspended \$ _____ | | <input type="checkbox"/> Civil Penalty <input type="checkbox"/> Civil Judgment: _____ <input type="checkbox"/> OSCCE to collect <input type="checkbox"/> Deemed uncollectible <input type="checkbox"/> Transferred to: Cr.A. _____ |
| RESTIT. | <input type="checkbox"/> VOP/Contempt <input type="checkbox"/> Revoked <input type="checkbox"/> Not Found <input type="checkbox"/> Continued <input type="checkbox"/> Modified <input type="checkbox"/> Discharged <input type="checkbox"/> Withdrawn <input type="checkbox"/> Dismissed <input type="checkbox"/> Resent/Review <input type="checkbox"/> Boot Camp/ Diversion <input type="checkbox"/> Boot Camp <input type="checkbox"/> 4177(d)(5) <input type="checkbox"/> GSP | | |
| | Effective: <u>6-22-06</u> Deferred DATE: _____ Facility: _____ Be imprisoned for _____ years <u>6</u> months _____ days _____ At level <u>5</u> Level 5 Treatment: _____ <input type="checkbox"/> Min. Mandatory time: _____ <input type="checkbox"/> Credit For: _____ Title/Sec: _____ <input type="checkbox"/> No Credit Time Due | | (CIRCLE ONE) COMMITMENT RELEASE DEFERRED COMMITMENT |
| CONDITIONS | <input type="checkbox"/> Suspended Immediately <input type="checkbox"/> Suspended Time Served <input checked="" type="checkbox"/> Suspended After <u>time served</u> <input type="checkbox"/> for <u>1 yr</u> at level <u>1</u> <input type="checkbox"/> Suspended After _____ <input type="checkbox"/> for _____ at level _____ <input type="checkbox"/> Suspended After _____ <input type="checkbox"/> for _____ at level _____ Followed by: _____ at level _____ Balance at level _____ <input type="checkbox"/> Consecutive to: _____ <input type="checkbox"/> Concurrent with: _____ <input type="checkbox"/> Level 4 Sentence. Hold at: <u>3</u> <u>4</u> <u>5</u> <input type="checkbox"/> Guilty but Mentally Ill, to be confined at Delaware Psychiatric Center (Delaware State Hospital) until competent. | | |
| | <input type="checkbox"/> TBD by AG _____ Days <input type="checkbox"/> Determined by ISO <input type="checkbox"/> Joint & Several w/co-def. ID No. _____ | | 1. <u>Victim 1: [illegible]</u> AMOUNT: <u>7000.00</u> 2. <u>06-637</u> AMOUNT: _____ 3. _____ AMOUNT: _____ |
| DEFENSE: | <input type="checkbox"/> All Terms and Conditions Re-imposed <input checked="" type="checkbox"/> Pay costs, fines, restitution <input type="checkbox"/> Previously Ordered <input checked="" type="checkbox"/> During Probation <input type="checkbox"/> During / Within _____ <input checked="" type="checkbox"/> No Contact with: <u>Victims</u> <input type="checkbox"/> Drug Court Standard Conditions <input type="checkbox"/> Comm Serv: _____ Hrs <input type="checkbox"/> No Driving Per Statute: _____ Mitigating/Aggravating: <u>SB 50:</u> | | <input type="checkbox"/> Residential Drug/Alcohol <input type="checkbox"/> Outpatient Drug/Alcohol <input type="checkbox"/> 4177 DUI Program <input type="checkbox"/> Alcohol Treatment <input type="checkbox"/> Random Urinalysis <input type="checkbox"/> Zero Tolerance <input type="checkbox"/> Mental Health Eval. <input type="checkbox"/> Sub. Abuse Eval. <input type="checkbox"/> No Drugs/Alcohol Unless Medically Prescribed. |
| | <input type="checkbox"/> Parenting <input type="checkbox"/> TASC Eval / Mon <input type="checkbox"/> DHSS Conditions <input type="checkbox"/> Obtain GED <input type="checkbox"/> Job Training <input type="checkbox"/> Fully Employed <input type="checkbox"/> Forfeit: _____ Other Conditions: <u>Left prison with bond from the offer of sale of his securities on Del. A to be held on return to</u> | | <input type="checkbox"/> TIER LEVEL: <input type="checkbox"/> SEX OFFENDER: Registration per 11 Del.C. § 4120-4122; 11 Del.C. § 4336; 21 Del.C. § 2718 (Felony Only) <input type="checkbox"/> DNA Testing <input type="checkbox"/> HIV Testing |

November 30, 2005

DEFENSE: _____ DAG: _____ CLERK: _____ CT. REPORTER/FTR: _____ PROBATION: _____ TASC: _____

STATEMENT OF FACTS

WHEREAS THE PETITIONER APPEARED BEFORE THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR THE COUNTY OF NEW CASTLE AS A RESULT OF A FILING OF AN INTERSTATE AGREEMENT ON DETAINERS (I.A.D.) ON FEBRUARY 16, 2006, BY THE STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL, TO ANSWER QUESTIONS IN THIS HONORABLE COURT: AND

WHEREAS, THE STATE OF DELAWARE, OFFICE OF THE ATTORNEY GENERAL, ACCEPTED SERVICE OF THE I. A. D. ON FEBRUARY 28, 2006: AND

WHEREAS UNDER THE TERMS AND CONDITIONS OF THE I. A. D., THE STATE OF DELAWARE HAD 180 DAYS TO TRANSPORT THE PETITIONER TO THE STATE OF DELAWARE, ADJUDICATE THE PENDING CHARGES AND RETURN THE PETITIONER TO THE STATE OF FLORIDA: AND

WHEREAS, AUGUST 28, 2006 REPRESENTS THE 180TH DAY AS ALLOTTED UNDER THE TERMS AND CONDITIONS AS SET FORTH IN THE I. A. D., AND THE STATE OF DELAWARE HAS NO PENDING CHARGES AGAINST THE PETITIONER.

GROUND TWO CONTINUED

- 3) PARTICIPATE IN A "WORK RELEASE" PROGRAM.
- 4) TO GO TO THE LAW LIBRARY AND RESEARCH FLORIDA STATE STATUTES PERTAINING TO THE PETITIONER'S PENDING LEGAL MATTERS IN FLORIDA.
- 5) TO RETURN TO WORK AT HIS PERMANENT FACILITY AS A STATE CERTIFIED G.E.D. TUTOR.
- 6) HAS BEEN DENIED INFORMATION REGARDING A DETAINER, IT'S ORIGIN AND NATURE OF THE PENDING CHARGES.
- 7) TO RESOLVE ANY OUTSTANDING DETAINERS.
- 8) BEING DISCRIMINATED AGAINST AS THE PETITIONER IS ON A CELL-BLOCK WITH NON-SENTENCED INDIVIDUALS.

GROUND THREE CONTINUED

- 3) DAILY LOCKDOWNS FOR NO REASON OTHER THAN LACK OF MANPOWER.
- 4) REFUSAL TO PROVIDE A CURRENT STATUS SHEET AND CLASSIFYING THE PETITIONER AND THUS KEEPING THE PETITIONER IN HIS CURRENT HOUSING SITUATION.

MOREOVER THE CURRENT HOUSING SITUATION IS IN DIRECT CONTRADICTION TO THE PETITIONER'S HOME STATE HOUSING CLASSIFICATION OF MINIMUM PERMITTING THE PETITIONER WITH MOVEMENT ABOUT THE FACILITY DURING SPECIFIC TIMES OF THE DAY.

RELIEF SOUGHT

UPON DEFICIENCY, PETITIONER PRAYS
THIS HONORABLE COURT TO ISSUE A FEDERAL
MANDATE FOR THE PETITIONER'S IMMEDIATE RELEASE
FROM CUSTODY AND RETURNED TO THE STATE
OF FLORIDA, DEPARTMENT OF CORRECTIONS
MADISON CORRECTIONAL INSTITUTION 382 M.C.I.
WAY MADISON FLORIDA VIA THE TALLAHASSEE
AIRPORT WITHIN (72) HOURS OF THIS HONORABLE
COURT'S MANDATE AND REMOVE THIS PETITIONER'S
PERSON FROM STATE CUSTODY TO A FEDERAL
HOLDING CENTER AWAITING TRANSPORTATION.